



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 389 OF 2004

Ramchandra S/o. Bhagaji Palve,
Aged : 32 years, Occu. : Labour,
R/o. Donwada, Tq. Jintoor, Dist. Parbhani.

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra

... Respondent
(Orig. complainant)

...
Mr. S. V. Mundhe, Advocate for Appellant
Mr. A.A.A. Khan, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 16 JULY 2024

PRONOUNCED ON : 20 JULY 2024

JUDGMENT :

1. Conviction recorded by the learned Sessions Judge, Parbhani in Sessions Trial No.156 of 2003, convicting appellant for offence punishable under section 304A of Indian Penal Code vide judgment and order dated 16.04.2004 is assailed by way of present appeal.

PROSECUTION CASE IN TRIAL COURT IN BRIEF

2. On 19.07.2003, appellant and deceased Ramkishan, who were both working as watchmen, had returned towards the house of deceased. In the backdrop of accusation of using coil of

heater, which did not belong to him, there was heated exchange of words between both of them. In presence of informant - wife of deceased, accused slapped deceased Ramkishan, lifted him and flung him on the ground. Accused then sat on his chest and beat him. Peoples present there, separated them. After a short while, deceased fell unconscious and froth was coming from his mouth and so he was taken to hospital, but on examination, he was declared dead. Therefore, on report lodged by PW1 Manoramabai, crime was registered by Jintoor police station bearing No.106 of 2003 for offence punishable under sections 302 of Indian Penal Code (IPC).

3. On completion of investigation, PW10 P.I. Nimmanwar, Investigating Officer, charge-sheeted accused. Case being exclusively triable by Court of Sessions, was tried by learned Sessions Judge, Parbhani, vide Sessions Trial No.156 of 2003 and on appreciating the case of prosecution and analyzing the evidence, learned trial Judge reached to a finding that, it is not at all a case of homicide, rather a case of culpable homicide not amounting to murder has been made out, and by judgment and order dated 16.04.2004 convicted appellant for offence punishable under section 304A of IPC and sentenced him to suffer rigorous imprisonment for six months and to pay fine.

It is the above judgment and order of conviction which is now taken exception to, by the original accused by filing instant appeal before this Court.

EVIDENCE ADDUCED IN TRIAL COURT

4. PW1 informant Manoramabai deposed that, on the day of incident, accused came in front of their house and questioned her husband for bringing a coil of electric heater. When her husband denied, he initially slapped, then lifted her husband and threw on the ground. Thereafter, accused sat on the chest of her husband and gave fist blows. At that time, one Dhumal and Raut were present there. Police was informed, who came and took the deceased to hospital, but on examination, he was declared dead and therefore she lodged report at Exh.11.

PW2 Baburao denied seeing any occurrence of fall of Ramkishan and being assaulted by Ramchandra, and therefore, not finding him supporting, he was cross examined.

PW3 Dr. Rizwan Kazi, autopsy doctor, who conducted postmortem and issued opinion about probable cause of death due to asphyxia due to head injury.

PW4 Prabhakar, pancha to inquest panchanama at Exh.16.

PW5 Naseer Ahmad, PSO, who registered crime bearing No.106 of 2003.

PW6 Giridharidas, brother of owner of factory where accused and deceased were working as a watchmen, stated that, on the next day, he learnt that, there was quarrel between accused and deceased. On inquiry he learnt that, deceased removed the coil of electric heater.

PW7 Sitaram is the Muneem of the factory where accused and deceased were working. He claims to have received telephonic information about quarrel, visiting the spot and seeing and meeting wife of deceased.

PW8 Digamber, pancha to spot panchanama at Exh.22.

PW9 P.S.I. Mukund Deshmukh and **PW10** P.I. Shrikant Nimmanwad are the Investigating Officers.

SUBMISSIONS

On behalf of Appellant : -

5. Challenging the verdict, the learned counsel for appellant would submit that, prosecution has not proved that death of Ramkishan was only and only because of assault. He

pointed out that, they both were colleagues. Prosecution evidence suggest merely slapping. That, deceased fell and suffered injuries. He pointed out that, there are no external injuries. He took this court through the substantive evidence of PW3 autopsy doctor, and would submit that, opinion issued is about death due to asphyxia due to head injury. That, such death is not possible on account of beating or falling. He pointed out that, independent witness has not supported the prosecution. That, there is no corroboration to the testimony of informant wife. Therefore, he questions the findings and reasons and prays to allow the appeal by setting aside the impugned judgment.

On behalf of Respondent – State :-

6. Supporting the judgment, learned APP pointed out that, wife is a direct eye witness. She has narrated whatever she saw. In her presence followed by quarrel appellant initially slapped her husband, then lifted and threw him on the floor, which was hard surface. The force with which he was thrown caused internal bleeding. Death was only and only because of the episode where there is overt act of appellant. Therefore, according to learned APP, learned trial court has correctly held appellant guilty for culpable homicide not amounting to murder and he prays not to interfere as death has been caused by appellant.

ANALYSIS

7. Admittedly, though appellant was charge-sheeted for commission of offence under section 302 of IPC, learned trial Judge held case proved to the extent of offence punishable under section 304A of IPC.

8. Fundamental attack in appeal is that, mere slapping and fall would not result in death. Secondly, medical evidence does not show external injury except forehead.

9. On going through the postmortem report, more particularly, column no.17, following injuries are noticed on the person of deceased :-

“Contused lacerated wound over forehead just above right eyebrow – 2cm x ½ cm x ¼ cm – oblique in direction probably caused within 12 to 24 hours. Grievous injury.”

10. Though doctor has issued probable opinion regarding death due to asphyxia due to head injury, there are other findings also regarding extradural and subdural hemorrhage, which is internal injuries. Admittedly and there is not dispute that, injury was noticed on the forehead. In the considered opinion of this court, it is contrecoup injury as there is finding of doctor regarding

extradural and subdural hemorrhage to the brain. A contrecoup injury occurs at the side of impact where force of impact is directly transmitted to the brain, whereas contrecoup injuries occurs on the opposite side of the brain from the side of impact. Here, precisely findings recorded by autopsy doctor suggest that though there is injury to forehead, the impact is to the brain.

11. Admittedly, occurrence erupted all of a sudden. Both are colleagues. Initial quarrel resulted into slapping and then when deceased fell, his wife PW1 deposed about accused sitting on his chest and showering fist blows. Therefore, learned trial Judge correctly recorded the findings that it is not a case homicidal death, rather it is a case falling under culpable homicide not amount to murder and thereby offence of 304A is said to be proved. Appreciation is correct. No perversity or illegality has been brought to the notice of this court in the observations and findings reached at by learned trial Judge. Consequently, finding no merits in the appeal, I proceed to pass following order :-

ORDER

The appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)